



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



26 JUL 2002

FILE: [Redacted] Office: Los Angeles

Date:

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the
Immigration and Nationality Act, 8 U.S.C. 1432

IN BEHALF OF APPLICANT: [Redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The record reflects that the applicant was born on July 18, 1972, in Vietnam. The applicant's father [REDACTED] was born in Vietnam in May 1937, never became a U.S. citizen and died in Vietnam in December 1990. The applicant's mother [REDACTED] was born in February 1939 in Vietnam and became a naturalized U.S. citizen on May 25, 1988. The applicant's parents married each other on January 19, 1958. The applicant was lawfully admitted for permanent residence on August 25, 1975. The applicant seeks a certificate of citizenship under section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The district director determined the record failed to establish that the applicant met the requirements of section 321 of the Act and denied the application accordingly.

On appeal, counsel states that the application should be granted under section 320 of the Act, 8 U.S.C. 1431, based on the newly enacted Child Citizenship Act (CCA) of 2000, Pub.L. 106-395, which allows for the naturalization of "at least one parent" to suffice while the child is under the age of 18. The CCA provides benefits only to those persons who had not yet reached their 18th birthday as of February 27, 2001. The applicant was 28 years and 7 months old on February 27, 2001, and ineligible for the benefits.

On appeal, counsel states that, in the unlikely event that the CCA does not apply to the applicant, the father's remarriage to another woman in Vietnam is prima facie evidence that the father obtained dissolution of marriage after the applicant's immigration to the United States. Counsel asserts that where the applicant's parents had been physically and emotionally separated since 1972, the father was missing and believed dead for more than 10 years and the mother simply opted to never remarry, the physical and emotional separation should be considered tantamount to a "legal separation" as required.

On appeal, counsel submits a document from the People Committee-Republic of Vietnam dated March 15, 1987. The document states that the People Committee of the Court declares the marriage between [REDACTED] terminated. The applicant was 14 years and 8 months old on March 15, 1987.

Section 321 of the Act was repealed on February 27, 2001. Former section 321 of the Act provided that:

- (a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents; or
- (2) The naturalization of the surviving parent if one of the parents is deceased; or
- (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
- (4) Such naturalization takes place while said child is under the age of 18 years; and
- (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

In Matter of Fuentes, 21 I&N Dec. 893 (BIA 1997), the Board stated the following: "Through subsequent discussions, [the interested agencies] have agreed on what we believe to be a more judicious interpretation of section 321(a). We now hold that, as long as all the conditions specified in section 321(a) are satisfied before the minor's 18th birthday, the order in which they occur is irrelevant."

The record establishes that (1) the applicant's mother became a naturalized U.S. citizen in May 1988 and prior to his 18th birthday, (2) the marriage of the applicant's parents was terminated in 1987 when he was 14 years old, and (3) the applicant was residing in the United States in his mother's legal custody as a lawful permanent resident when his mother naturalized.

In order for the applicant to receive the benefits of section 321 of the Act, there must have been a legal separation of the parents. Matter of H--, 3 I&N Dec. 742 (C.O. 1949), held that the term "legal separation" means either a limited or absolute divorce obtained through judicial proceedings. The record contains that evidence.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has met this burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The district director's decision is withdrawn, and the application is approved.